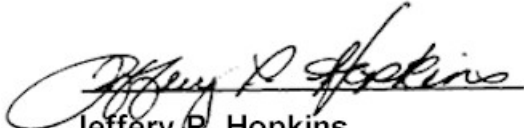


**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**

**Dated: August 15, 2019**



  
Jeffery P. Hopkins  
United States Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

In re:	)	Chapter 11
	)	
Flipdaddy's, LLC.,	)	Case No. 1:18-bk-14408
	)	
Debtor.	)	Chief Judge Jeffrey P. Hopkins
	)	

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**ORDER CONFIRMING PLAN**

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This matter came on before the Court this 30<sup>th</sup> day of July, 2019 for hearing on confirmation of the Chapter 11 Plan ("Plan") filed by the Debtor, Flipdaddy's, LLC. ("Debtor"). (Doc. No. 110). In addition to the consideration of the confirmation of the Plan, three other matters were also

scheduled for hearing being the (1) Objection to Assumption of a Lease as well as Objection to the Plan IRC, Newport Pavilion, LLC (Doc. No. 142 and 153); (2) Objection to Assumption of a Lease as well as Objection to the Plan of The Meyer Y. Cooper Company (Doc. No. 135 and (154) and (3) Objection by the Debtor to the Application for Approval and Payment of an Administrative Claim filed by Creation Gardens, Inc. (Doc. No. 132 and Doc. No. 149). (collectively referred to herein as the “Objections”)

Appearances being made by Steven L. Diller, Counsel for the Debtor Flipdaddy’s, LLC along with two representatives of the Debtor being present, being Thomas Sacco, the CEO of Flipdaddy’s and Leah Douglas, the comptroller of Flipdaddy’s. In addition, Douglas Hawkins, appeared as Counsel for the Office of U.S. Trustee, Jason Torf appeared as counsel for Gordon Food Service, Inc., Rocco Debitetto as counsel for IRC Newport, Casey Cantrell-Swartz as counsel for The Myer Y. Cooper Company and Benjamin Rodriguez as counsel for Park National Bank.

Prior to consideration of the confirmation of the Plan; the Court was advised by counsel for the Debtor that subject to the Court’s confirmation of the Plan agreed entries had been submitted to the Court resolving the Objections and such agreed entries included terms that modified the Plan treatment. The Court was further advised that two other matters also affecting the proposed Plan had been filed of record prior to the hearing that also included terms to be added to the order confirming the plan, being (1) an Order Approving Motion of Debtor to Assume an Executory Contract with Gordon Food Service, Inc., Establish the Cure Amount and Procedures Related Thereto (Doc. No. 123) and (2) a Stipulation and Agreement between the Debtor

and Park National Bank for to Modify the Proposed Plan Treatment of Park National Bank (Class 1) (Doc. No. 147).

For purposes of the Hearing, the Court would find that notice of the Order and Notice Approving the Debtor's Disclosure Statement and Fixing Time for Filing Acceptances and Rejections to Plan ("the Plan Hearing Order")(Doc. No. 109) was duly given and that the notice provided thereof complies with the applicable requirements of the Bankruptcy Code and Rules. (Doc. No. 141) The Court would further find that in accordance with the Plan Hearing Order, the Debtor caused to be published Notice of the Plan Hearing Order as well as the Solicitation Procedures for new Membership Interests in the Reorganized Debtor under the Plan in the Cincinnati Enquirer (Debtor's Exhibit 1) and the USA Today (Debtor's Exhibit 2)

The Court would further find that in accordance with the Plan Hearing Order, the deadline for voting and receipts of ballots was July 19, 2019 and the deadline for seeking to acquire New Membership Interests in the Reorganized Debtor under the Plan was July 26, 2019.

The Court was advised by Counsel for the Debtor that no inquiries or requests for solicitation materials were received seeking to acquire interests in the Debtor.

The Court would further find that, the Debtor has caused to be filed a Tabulation and Summary of Ballots (Doc. No. 159). Based on the Tabulation and Summary of Ballots, Classes 1,3, 7, and 9 accepted the Plan. The Court would further find that Class 1 is Park National Bank and Class 3 is Gordon Food Service, Inc. and the Court would find that the proposed modification as to the treatment of Park National Bank (Doc. No. 147) and Gordon Food Service are modifications that do not require any additional notice nor effect as to any other parties in interest and are therefore approved. The Court would also find that resolution and treatment of the Creation

Gardens, Inc. claim is provided for within the terms of the Plan and does not require any additional notice nor effect any other parties in interest and therefore will be approved. Finally, the Court has reviewed the proposed agreed entries with respect to the resolution of the Objections to the Assumption of the Lease and to the Plan by IRC, Newport Pavilion, LLC and The Meyer Y. Cooper Company and would find the same to be well taken, in the interest of the Debtor, the Plan and the Estate and would therefore approve the same.

The Court would further find that based on the Tabulation and Summary of Ballots in two impaired classes, Class 4 and Class 8 no votes were cast. The Court has considered the proffer of evidence and facts on this issue by counsel for the Debtor, the arguments and authority advanced in the Memorandum in Support of the Plan filed by the Debtor (Doc. No. 160) and the record herein and would specifically find as follows:

1. Both classes are single member classes;
2. Both received notice of these proceedings and in particular this proceeding and did not file any objections to the Plan nor appear at confirmation;
3. Class 8 filed a proof of claim in this cause and Class 4 under the Backstop Commitment Agreement and the treatment of Class 8 acquired claims in the amount of \$456,916.57;
4. The extensive involvement by both Class 4 and Class 8 in the events leading up to the confirmation of the Plan;
5. The benefits received from plan treatment by both classes.
6. The detriment to all other classes that have accepted the Plan, the total amount of claims approving the Plan and the fact that every single vote cast in this case was in acceptance of the Plan.

Based on the foregoing, the Court would conclude and find that the fact neither class cast a ballot may be presumed and the Court does hereby find that such Classes have accepted the Plan and consented to be bound by its terms. The Court would therefore find based on the results of the balloting and the foregoing findings the Plan is a consensual Plan under 11 USC 1129(a)(1).

In considering the proposed Plan of the Debtor as amended by the modifications previously

set forth herein, the results of the balloting of creditors and parties in interest in this case, the resolution of all pending objections, the proposed agreements in modification of the Plan, Exhibits 3 and 4 admitted under seal for consideration by the Court, the testimony of Mr. Thomas Sacco and the proffer and representations made by Counsel by the Debtor as well as the statements in support by the respective counsel of the Office of United States Trustee, Park National Bank, Gordon Food Service, Inc.; IRC, Newport Pavilion, LLC, and The Meyer Y. Cooper Company, the Court, for purposes of the requirements for confirmation set forth in 11 U.S.C. § 1129(a), find as follows:

- (1) The plan complies with the applicable provisions of this title.
- (2) The proponent of the plan complies with the applicable provisions of this title.
- (3) The plan has been proposed in good faith and not by any means forbidden by law.
- (4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.
- (5) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and
  - (i) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and
  - (ii) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.
- (6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.
- (7) With respect to each impaired class of claims or interests each holder of a claim or interest of such class (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the

plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

(8) That with respect to each class of claims or interests such class has accepted the plan; or such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that with respect to a claim of a kind specified in section 507 (a)(2) or 507 (a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

(10) With respect to the treatment of claims of a kind specified in section 507 (a)(1), 507 (a)(4), 507 (a)(5), 507 (a)(6), or 507 (a)(7) of this title, each holder of a claim of nature will receive—(i) deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or cash on the effective date of the plan equal to the allowed amount of such claim;

(11) With respect to a claim of a kind specified in section 507 (a)(8) of this title or for a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507 (a)(8), but for the secured status of that claim, the holder of such claim will receive on account of such claim regular installment payments in cash (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim (ii) over a period ending not later than 5 years after the date of the order for relief in this case and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan.

(12) At least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(13) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(14) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(15) The Plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(16) The Debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation.

(17) No transfers of Property are provided in the Plan, and thus all transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

The Court would further find that based on the terms of the Contribution and Backstop Commitment Agreement (Doc. No. 109-2), the funds available from such agreement, the Plan, the terms of the Plan providing for the release of signatories to the Settlement Agreement and General Release admitted under seal (Exhibit 4), combined with the terms of the Plan for treatment of Class 8 and the ability of the Backstop Commitment of FDX, II and Thomas Kearney to meet the terms of such treatment, the Court would find that unusual circumstances exist for the approval of the terms of the Plan set forth Article VIII and specifically as to the treatment of claims arising under Class 8. In reaching this conclusion the Court would make the following specific findings:

- (1) There is an identity of interests between the Debtor and the Released Parties based on the fact that any litigation against the Released Parties would in essence, constitute litigation or a claim against the Reorganized Debtor, will deplete the assets of the estate and materially affect the Plan of Reorganization;
- (2) Subject to the Confirmation of the Plan, the Released Parties will have contributed substantial assets to the reorganization;
- (3) The injunction, release and other benefits provided under Article VIII of the Plan is essential to the Plan of Reorganization and the reorganization hinges on the Debtor being free from indirect suits against the Released Parties who would have indemnity or contribution claims against the Reorganized Debtor;
- (4) The Court has found that the Released Parties under Class 9 have overwhelmingly voted to accept the Plan and that for purposes of confirmation, Class 8 has also accepted the Plan.
- (5) The Plan provides a mechanism through the Backstop Commitment Party, FDX, II and

KTM, II to pay for all of claims that could arise under Class 8.

- (6) Based on the nature of the claims that might arise under Class 8, the requirement under the Plan that any such claims that may arise be resolved under the treatment provided under Class 8 and the fact that the Plan includes a mechanism through the Backstop Commitment Party, FDX, II and KTM, II to pay for all of claims that could arise under Class 8 provides the opportunity for Class 8 to recover in full.

The Court would further find that based on Exhibit 4, the Personal Financial Statement of Thomas Kearney and the testimony of Mr. Thomas Sacco that the Plan is feasible.

Based on the foregoing findings, the Court would find and holds that the Plan filed by the Debtor on May 22, 2019, (Doc. 110) as modified herein (the “Plan”), satisfies all the necessary requirements for confirmation pursuant to 11 U.S.C. § 1129, and that the Plan should be confirmed.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that:

1. The following modifications are incorporated into the terms of the Plan:

- a. As to Class One, Park National Bank

(i) This claim shall be reduced to \$200,000 by a payment of \$50,000.00 from the Debtor or FDXII under the Backstop Commitment Agreement and upon such payment the balance of \$200,000 shall be re-amortized over *7 years, maturing on 4/27/2026* and accrue interest at the rate of 6% per annum.

- b. As to Class Three, Gordon Food Service, Inc. (“GFS”)

(i) Upon the Effective Date of the Plan, GFS will grant to the reorganized debtor seven-day credit terms with automatic weekly EFT. GFS reserves and does not waive any of its rights under the Master Distribution Agreement between GFS and the Debtor dated July 14, 2016 (the “MDA”), including, but not limited to, the right to shorten or revoke credit terms or terminate service based upon any default by the reorganized debtor or any change in the reorganized debtor’s creditworthiness in GFS’ sole discretion. Any change in credit terms imposed by GFS shall not in any way affect the reorganized debtor’s obligation to pay the remaining cure amounts set forth herein.

(ii) GFS’ unsecured claim shall be paid in full under the terms set forth in this subparagraph. A payment in the amount of \$50,000.00 shall be made within five (5) business days of the entry of this Order. Simultaneously with



that payment, the reorganized debtor shall issue to GFS a note, secured by all of the reorganized debtor's assets, in the amount of \$126,884.92 (the "Secured GFS Note"). Within 30 days of the entry of this Order, the reorganized debtor shall commence payments of a minimum of \$5,000.00 per month toward repayment of the Secured GFS Note with the terms of such payments to include that any such payments shall be received by GFS not later than the 25th day of each month, with the balance to be paid in full by January 27, 2020. If the balance is paid in full by December 27, 2019, then all accrued interest will be waived by GFS. If the balance is not paid in full by December 27, 2019, then in addition to any balance remaining, there shall also be due all accrued and unpaid interest remains due and owing..

c. As to Class 6, the Assumed Executory Contract of The Meyer Y. Cooper Company:

The Meyer Y. Cooper Company Class 6 claim shall be treated as set forth in the Stipulation and Agreed Order Resolving (A) Objection of The Meyer Y. Cooper Company to Motion to Assume Lease or Executory Contract with The Meyer Y. Cooper Company and Establish the Cure Amount and Procedures Related Thereto; and (b) Objection of The Meyer Y. Cooper Company to the Chapter 11 Plan of Reorganization of Flipdaddy's, LLC [Doc. 165].

d. As to Class 6, the Assumed Executory Contract of IRC Newport Pavilion, L.L.C.:

IRC Newport Pavilion LLC's Class 6 Claim shall be treated as set forth in the Stipulation and Agreed Order Resolving (A) Objection of IRC Newport Pavilion, L.L.C. to Motion to Assume Lease or Executory Contract with IRC Newport Pavilion, L.L.C. and Establish the Cure Amount and Procedures Related Thereto; and (b) Objection of IRC Newport Pavilion, L.L.C. to the Chapter 11 Plan of Reorganization of Flipdaddy's, LLC [Doc. 166].

**2. IT IS FURTHER ORDERED** that pursuant to the Plan any signatory to the Settlement Agreement and General Release that is also a Contributor and or Backstop Commitment Participant to the Contribution and Backstop Commitment Agreement (Doc. No. 109-2) ("the Released Parties") are hereby accorded the identical relief of the Debtor and the Reorganized Debtor included under the provisions under Article VIII of the Plan and 11 U.S.C. §1141.

3. The Plan is hereby **CONFIRMED**, effective from the time of the entry of this Order.

**IT IS ORDERED.**

**Notice was electronically served on the date of entry on the following recipients:**

Asst US Trustee (Cin)  
ustpreion09.ci.ecf@usdoj.gov

John C Cannizzaro on behalf of Creditor Gordon Food Service, Inc  
John.Cannizzaro@icemiller.com, Thyra.Skofield@icemiller.com

Casey M Cantrell Swartz on behalf of Interested Party Myers Y Cooper Company  
cswartz@taftlaw.com, docket@taftlaw.com;lsutton@taftlaw.com

Rocco I Debitetto on behalf of Creditor IRC Newport Pavilion, LLC  
ridebitetto@hahnlaw.com, hlpcr@hahnlaw.com;cmbeitel@hahnlaw.com

Rocco I Debitetto on behalf of Creditor IRC Retail Centers LLC  
ridebitetto@hahnlaw.com, hlpcr@hahnlaw.com;cmbeitel@hahnlaw.com

Gregory D Delev on behalf of Creditor Ohio Department of Taxation  
bankruptcy@delevlaw.com

Steven L Diller on behalf of Debtor In Possession Flipdaddy's, LLC  
steven@drlawllc.com, kim@drlawllc.com;eric@drlawllc.com

Barry F Fagel on behalf of Creditor Bryant Hartke Construction  
bfagel@lindhorstlaw.com

Brian T Giles on behalf of Creditor Creation Gardens, Inc.  
Brian@gilesfirm.com, bgiles3434@gmail.com

Douglas N Hawkins on behalf of U.S. Trustee Asst US Trustee (Cin)  
doug.hawkins@usdoj.gov, cathy.cooper@usdoj.gov

Benjamin M Rodriguez on behalf of Creditor The Park National Bank  
brodriguez@fp-legal.com, kmorales@fp-legal.com

John A Schuh on behalf of Creditor Ford Motor Credit Company, LLC

jaschuhohecf@swohio.twcbc.com

Jason M Torf on behalf of Creditor Gordon Food Service, Inc  
jason.torf@icemiller.com

**Notice was mailed to:**

American Express National Bank  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern, PA 19355-0702

BDO USA, LLP  
Laurence W Goldberg, Dir, Receivables Mg  
4135 Mendenhall Oaks Parkway  
Suite 140  
High Point, NC 27265

Greater Comfort Heating & Air  
2001 Monmouth Street  
Newport, KY 41071

Isaac, Wiles, Burkholder & Teetor, LLC

Blue Bridge Financial, LLC  
11911 Freedom Drive  
One Fountain Square, Suite 570  
Reston, VA 20190

Ascentium Capital, LLC  
23970 HWY 59 N  
Kingwood TX 77339

Carol Turner  
1125 Columbia Street  
Newport, KY 41071

Bailey Dorsey  
1565 Fairway Drive  
Lawrenceburg, Indiana 47025

BARKAN MEIZLISH DEROSE  
WENTZ MCINERNEY PEIFER, LLP  
Mr. Robert E. DeRose

250 East Broad Street, 10th Floor  
Colum bus, Ohio 43215

Dinsmore & Shohl LLP  
Attention: Mr. Brian Sullivan  
255 East Fifth Street  
Suite 1900  
Cincinnati, OH 45202

American Express  
National Bank  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern, PA 19355-0701

Greater Comfort Heating  
& Air  
2001 Monmouth Street  
Newport, KY 41071-2666

Allegra Products  
1146 Hawkstone Drive  
Cincinnati, OH 45230-  
3556

ASCAP  
21678 Network Place  
Chicago, IL 60673-1216

American Express  
PO Box 981535  
El Paso, TX 79998-1535

Anderson Hills Plumbing  
6229 Beechmont Avenue  
Cincinnati, OH 45230-  
1902

BDO USA, LLP  
Laurence W Goldberg, Dir,  
Rcv Mgr.  
4135 Mendenhall Oaks  
Parkway  
Suite 140  
2060 Digital  
PO Box 645440  
Cincinnati, OH 45264-5440

Alliance Funding Group  
Pawnee Leasing  
3745 W. Chapron Ave, Suite  
200  
Orange, CA 92868

Ascentium Capital, LLC  
23970 Highway 59 N  
Kingwood, TX 77339-1535

American Express Merchant  
Financing  
PO Box 981535  
El Paso, TX 79998-1535

Ascent Systems Innovations  
409 West 35<sup>th</sup> Street  
Latonia, KY 41015-1185

Flipdaddy's LLC  
7453 Wooster Pike  
Cincinnati, OH 45227-3895

2060 Digital/Hubbard Radio  
c/o Szabo Associates Inc.  
3355 Lenox Road NE, Suite 945  
Atlanta, GA 30326-1357

Amerifund  
2275 Half Day Road #343  
Bannockburn, IL 60015-1277

Allegra  
1146 Hawstone Drive  
Cincinnati, OH 45230-3556

American Express National Bank  
c/o Becket & Lee LLP  
PO Box 3002  
Malvern, PA 19355-0702

Ascentium Capital LLC  
23970 Hwy 59N  
Kingwood, TX 77339-1535

Asst US Trustee (Cin)  
Office of the US Trustee  
36 East Seventh Street  
Suite 2030  
Cincinnati, OH 45202-4457  
BMI General Licensing  
PO Box 630893  
Cincinnati, OH 45263-0893

BDO  
PO Box 642743  
Pittsburgh, PA 15264-2743

BJ Hicks  
444 Woodwick Court  
Cincinnati, OH 45255-3658

Brynmaur Bank Corporation  
620 West Germantown Pike  
Plymouth Meeting, PA 19462-1068

Barry Farmer Draperies  
11635 Deerfield Road  
Cincinnati, OH 45255-3658

Beckman Services, Inc.  
7661 Fields Ertel Road  
Cincinnati, OH 45241-1750

Belden Hill Private Equity, Inc.  
160 Belden Hill Road  
Wilton, CT 06897-2913

Belden Hill Private Equity, LLC.  
160 Belden Hill Road  
Wilton, CT 06897-2913

Bert's Plumbing  
1975 Alexandria Pike  
Newport, KY 41076-1123

Boone County Clerk  
3000 Conrad Lane  
Burlington, KY 41005-7870

Connie Krebs  
1162 Shayler Woods Drive  
Batavia, OH 45103-2684

Campbell County Fiscal Court  
Attn Campbell County Atty  
319 York Street  
Newport, KY 41071-1638  
Christman Outdoor Designs  
8833 Strout Road  
Clarksville, OH 45113-9568

Campbell County Sheriff's Office  
1098 Monmouth Street  
Suite 216  
Newport, KY 41071-3429

Christian and Carole Timoney  
214 Fox Hill Road  
Wethersfield, CT 06109-4132

Cincinnati Bell  
PO Box 748003  
Cincinnati, OH 45274-8003

Cintas Corporation  
3368 Turfway Road  
Erlanger, KY 41018-3155

City of Newport  
PO Box 1090  
Newport, KY 41071

City of Orange Beach  
PO Box 1159  
Orange Beach, AL 36561-1159

City of Union  
1843 Mt. Zion Road  
Union, KY 41091-9534

City of Union, Kentucky  
Greg D. Voss, Esq.  
301 West Pike Street  
Covington, KY 41011-2126

Coca-Cola Bottling Co.  
Consolidated  
PO Box 602937  
Charlotte, NC 28260-2937

Coca-Cola Consolidated  
Attn: Kent Workman, Esq.  
4100 Coca-Cola Plaza  
Charlotte, NC 28211-3481

Cold Spring Electrical  
Contractors  
5097 Gary Lane  
Newport, KY 41076-8789

Commonwealth of Kentucky  
1003 Twilight Trail  
Frankfort, KY 40601-8400

Craftsman Electric  
3855 Alta Avenue  
Cincinnati, OH 4523-3932

Custom Mail Services  
PO Box 37387  
Cincinnati, OH 45222-  
0387

Daniel & Nancy Angelillo  
158 Fairlane Drive  
Wethersfield, CT 06109-4121

DarPro  
PO Box 530401  
Atlanta, GA 30353-0401

Dennis and Marsha  
Angelillo  
370 Coppermill Road  
Wethersfield, CT 06109-  
4074

Direct TV  
PO Box 5006  
Carol Stream, IL 60197-5006

Duke Energy  
PO Box 1327  
Charlotte, NC 28201-1327

Economy Linen  
80 Mead Street  
Dayton, OH 45402-2395

Edward Beadle  
168 Langford Lane  
East Hartford, CT 06118-2369

Electric Masters, Inc.  
339 Pleasant Street  
Covington, KY 41011-3515

F. Collett, LLC  
3702 Fairfax Avenue  
Dallas, TX 75209-6214

FD Orange Beach 859, LLC  
24221 Perdido Beach Blvd.  
Orange Beach, AL 36561-  
3057

FD Orange Beach 859, LLC  
c/o Kane Russell Coleman Logan PC  
Attn: John Kane  
1601 Elm Street, Suite 3700  
Dallas, TX 75201-7207

FG Schaefer Co.  
PO Box 6505  
Cincinnati, OH 45206-  
0505

Florence Water & Sewer  
PO Box 368  
Florence, KY 41022-0368

Ford Motor Credit  
PO Box 790119  
St. Louis, MO 63179-0119

Ford Motor Credit  
Company  
PO Box 62180  
Colorado Springs, CO  
80962-2180

Frank Meak  
7631 Palmer Ct.  
Naples, FL 34113-3054

Fugazzi Co. Ltd.  
3875 Virginia Avenue  
Cincinnati, OH 45227-3409

GNG Plumbing  
24829 Canal Road  
Orange Beach, AL 36561-  
4185

Giles & Lenox LLC  
1018 Delta Avenue  
Suite 202  
Cincinnati, OH 45208-3100

Global Work Services  
19664 West 36<sup>th</sup> Avenue #611  
Gulf Shores, AL 36542-2793

Gordon Food Service  
4980 Gateway Blvd  
Springfield, OH 45502-  
8820

Greater Cincinnati Water  
Works  
PO Box 5487  
Carol Stream, IL 60197-5487

Grexxen  
6170 First Financial Drive  
Suite 203  
Cincinnati, OH 45236

Guggenheim  
3000 Internet Blvd. #570  
Frisco, TX 75034-2010

Guggenheim Development  
Svcs, LLC  
c/o Kane Russell Coleman  
Logan PC  
Attn: John J. Kane  
1601 Elm Street, Suite 3700  
Hersey Creamery Co.  
301 S. Cameron Street  
Harrisburg, PA 17101-2815

Hamilton County Treasurer  
PO Box 740857  
Cincinnati, OH 45274-0857

Hartke & Associates, Inc.  
2115 Schappelle Lane  
Cincinnati, OH 45240-  
2724

Humana  
PO Box 3280  
Milwaukee, WI 53201-3280

IMG College, LLC  
Attn Mark Bennett  
540 North Trade Street  
Winston-Salem, NC  
27101-2915

IRC Newport Pavilion, LLC  
c/o IRC Retail Centers  
814 Commerce Drive, Suite  
300  
Oak Brook, IL 60523-8823

IRC Retail Centers  
PO Box 6351  
Carol Stream, IL 60197-6351

John Kearney  
4665 Riverwalk Village  
Court  
Ponce Inlet, FL 32127-  
2700

Koorsen Fire and Security  
10608 Millington Court  
Cincinnati, OH 45242-4015

KTM II, LLC.  
c/o UBS Financial Services  
184 Liberty Corner Road, 1<sup>st</sup> Floor  
Warren, NJ 07059-6796

Kabbage  
925B Peachtree St. NE  
#1688  
Atlanta, GA 30309-3918

Kentucky Department of  
Revenue  
Legal Support Branch  
PO Box 5222  
Frankfort, KY 40602-5222

Kentucky State Treasurer  
501 High Street  
Frankfort, KY 40601-2103

Koorsen Fire & Security  
Inc.  
2719 N. Arlington Avenue  
Indianapolis, IN 46218-  
3300

M-2 Lease Funds, LLC  
175 N. Patrick Blvd., Suite 140  
Brookfield, WI 53045-5811

Marshmallow Products, Inc.  
684 Dunwoodie Drive  
Cincinnati, OH 45230-3931

Morgan Services, Inc.  
817 Webster Street  
Dayton, OH 45404-1529

Navitas Credit Corp.  
203 Ft. Wade Road, Suite 300  
Ponte Vedra, FL 32081-5159

NTN Buzztime, Inc.  
Dept. LA 24391  
Pasadena, CA 91185-4391

New Century Dynamics,  
Inc.  
9370 Stoney Ridge Lane  
Johns Creek, GA 30022-  
7684

Northern KY Health Dept.  
610 Medical Village Drive  
Edgewood, KY 41017-3416

NuC02 LLC  
PO Box 9011  
Stuart, FL 34995-9011

NuC02 LLC  
2800 SE Market Place  
Stuart, FL 34997-4965

Malott Nyhart  
Attn Nyhart Business Interests  
LLC  
575 Indian Hill Trail  
Cincinnati, OH 45243-4051

Nyhart Business Interests, LLC  
575 Indian Hill Trail  
Cincinnati, OH 45243-4051

Ohio Bureau of Workers  
Comp.  
Law Section Bankruptcy  
Unit  
PO Box 15567  
Columbus, OH 43215-  
Oracle America Inc.  
PO Box 203448  
Dallas, TX 75320-3448

Ohio Department of Taxation  
Bankruptcy Division  
PO Box 530  
Columbus, OH 43216-0530

Ohio State Treasurer  
PO Box 183014  
Columbus, OH 43218-3014

Park National  
1075 Nimitzview Drive  
Cincinnati, OH 45230-4359

Paul R. Hage  
Jaffe Raitt Heuer & Weiss, PC  
27777 Franklin, Suite 2500  
Southfield, MI 48034-8214

Perfection Pest Control  
9967 Old Union Road  
Union, KY 41091-9515

Phillip Fanning  
62 Jaques Lane  
South Windson, CT 06074-  
4222

Pic's Produce  
4756 Paddock Road  
Cincinnati, OH 45229-1004

Plante & Moran, PLLC  
16060 Collections Center  
Drive  
Chicago, IL 60693-0160

River City Dist., Inc.  
PO Box 58369  
Louisville, KY 40268-0369

Ralph Opp  
3133 Louders Road  
Goshen, OH 45122-9517

Robert Dames  
444 Ashworth Court  
Cincinnati, OH 45255-  
3657

Ron McDermott  
26 Sherman Avenue  
Fort Thomas, KY 41075-2515

Rumpke  
PO Box 538708  
Cincinnati, OH 45253-8708

SESAC, Inc.  
PO Box 5246  
New York, NY 10008-  
5246

Sanitation District No. 1  
1045 Eaton Drive  
Fort Wright, KY 41017-9681

Signal Networking  
8329 E. Main Street  
Apt. 1  
Alexandria, KY 41001-1408



Staples  
Department DET  
PO Box 83689  
Chicago, IL 60696-3689

State of Alabama  
PO Box 320001  
Montgomery, AL 36132-0001

Steven A. Crawford  
423 Knollwood Drive  
Highland Heights, KY 41076-1630

Stoll Keenon Ogden PLLC  
Gregory D. Pavey, Esq.  
300 W. Vine Street, Suite  
2100  
Lexington, KY 40507-  
1801  
The Myers Y Cooper  
Company  
9301 Montgomery Rd.,  
Suite 2B  
Cincinnati, OH 45242-  
7752  
TalentReef, Inc.  
210 University Blvd.  
Suite 300  
Denver, CO 80206-4618

Stoll-Keenon-Ogden  
PO Box 11969  
Lexington, KY 40579-1969

Targeted Lease Capital  
550 Main Street, Suite 300  
Williamsville, NY 14221

Thomas J. Lynch, CAE  
20 Starview Drive  
Hillsborough, NJ 08844-2523

TNS Jack, LLC  
15 Hawthorne Lane  
Coto De Caza, CA 92679-5152

Targeted Lease Capital, LLC  
c/o Getman & Biryla, LLP  
800 Rand Bldg, 14 Lafayette  
Square  
Buffalo, NY 14203-1995

Teasdale Fenton  
12145 Centron Place  
Cincinnati, OH 45246-1704

The Fortuity Group  
151 West Congress Street  
Suite 420  
Detroit, MI 48226-3204

The Fortuity Group, LLC  
Jaffe Raitt Heuer & Weiss, PC  
Attn Paul R Hage  
27777 Franklin, Suite 2500  
Southfield, MI 48034-8214

The Myers Y Cooper Company  
c/o Casey Cantrell Swartz, Taft Law  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202-3920

The Park National Bank  
4550 Eastgate Blvd.  
Cincinnati, OH 45245-  
1202

Thomas B. Kearney  
7844 Classics Drive  
Naples, FL 34113-3063

Thompson Hine  
312 Walnut Street  
14<sup>th</sup> Floor  
Cincinnati, OH 45202-4029

Titan Mechanical  
Solutions LLC  
11003 State Route 128  
Harrison, OH 45030-9710

UBS Financial Services  
184 Liberty Corner Road  
1<sup>st</sup> Floor  
Warren, NJ 07059-6796

US Bank Equipment Financial  
1310 Madrid Street  
Marshall, MN 56258-4099

UniFi Equipment Finance,  
Inc.  
3893 Research Park Drive  
Ann Arbor, MI 48108-  
2217

WJW Management, Inc  
6952 12<sup>th</sup> Street W.  
Jacksonville, FL 32220-2494

Woodhill Capital Corp.  
13 S. Cayuga Road  
Williamsville, NY 14221-6793

m2 Lease Funds LLC  
175 N. Patrick Blvd  
Suite 140  
Brookfield, WI 53045-5811

Steven L. Diller  
124 E. Main Street  
Van Wert, OH 45891

Ford Motor Credit Co., LLC.  
Dept 55953  
PO Box 55000  
Detroit, MI 48255-0953

Ohio Bureau of Workers  
Comp.  
Legal Division Bankruptcy  
Unit  
PO Box 15567  
Columbus, OH 43215-  
David Maier  
332 Elm Crest Drive  
Milford OH 45150-0000

10 Yarmouth Road LLC  
160 Beldon Hill Road  
Wilton CT 06897-0000

Arthur Fuller  
301 Fulling Mill Lane  
Fairfield CT 06824-0000

Doug Reynolds  
38661 N. 104th Place  
Scottsdale AZ 85262-0000

Edward Biery  
3475 Lindenwood Drive  
Erlanger KY 41018-0000

Linda Ricca  
50 Deforest Road  
Wilton CT 06897-0000

Lindsay Garber  
5821 Karen Lane  
Milford OH 45150-0000

Louis J. Manetti Trust  
Louis J. Manetti Trustee  
317 E. Haven Street  
Arlington Heights IL 60005-0000

Melissa Sullivan  
1164 Creekstone Drive  
Batavia OH 45103-0000

Pam Kelley & Chris Kelley  
49 Woodhill Road  
Wilton CT 06897-0000

Peter Andruszkiewicz  
10604 Tirano Court  
Fort Myers FL 33913-0000

Thomas A. Collett  
2215 Cedar Springs #801  
Dallas TX 75201-0000

**Office of the Attorney General**  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

David A. Glockner, Regional Director  
175 W. Jackson Boulevard, Suite 900  
Chicago, IL 60604

Attorney General of Ohio  
Collection Enforcement  
Section  
Attention: Bankruptcy  
division  
150 E. Gay Street, 21 St.  
Ascentium Capital, LLC  
23970 HWY 59 N  
Kingwood TX 77339

Ohio Department of Taxation  
30 east Broad Street, 21<sup>st</sup> floor  
Columbus, OH 43215  
Attn: Cory Steinmetz, Esq.

Carol Turner  
1125 Columbia Street  
Newport, KY 41071

Blue Bridge Financial, LLC  
11911 Freedom Drive  
One Fountain Square, Suite 570  
Reston, VA 20190

Bailey Dorsey  
1565 Fairway Drive  
Lawrenceburg, Indiana 47025

BARKAN MEIZLISH  
DEROSE  
WENTZ MCINERNEY  
PEIFER, LLP  
250 East Broad Street, 10th  
Floor  
Columbus, Ohio 43215

**Ohio Department of Job &  
Family Services**  
Attn: Program Services/Revenue  
Recovery  
P.O. Box 182404  
Columbus, Ohio 43218-2404

**Internal Revenue Service**  
P.O. Box 7346  
Philadelphia, Pennsylvania  
19101-7346

Assistant Attorney General  
of the United States  
Southern District of Ohio  
303 Marconi Blvd, Suite  
200  
Columbus, OH 43215  
Kentucky Department of  
Revenue  
**Excise Tax Section**  
Station 62  
PO Box 1303  
Frankfort KY 40602-1303

Dinsmore & Shohl LLP  
Attention: Mr. Brian  
Sullivan  
255 East Fifth Street  
Suite 1900  
Cincinnati, OH 45202  
**Ohio Dept of Taxation**  
Attn: Bankruptcy Division  
P.O. Box 530  
Columbus, Ohio 43216-0530

**Attorney General of the United  
States**  
Main Justice Building  
10th & Constitution Avenue, N.W.  
Washington, D.C. 20530

**Office of the Attorney General  
State of Kentucky**  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

Kentucky Department of  
Revenue  
**Division of Collections**  
PO BOX 491  
Frankfort, KY 40602-0491

**Ohio Bureau of Workers' Compensation**  
Attn: Law Section Bankruptcy Unit  
P.O. Box 15567  
Columbus, Ohio 43215-0567

c/o Attorney General  
Collection Enforcement Section  
Attn: Bankruptcy Staff  
150 E. Gay Street, 21st floor  
Columbus, Ohio 43215

**Attorney General of the United States**  
U.S. Department of Justice Tax Division  
Civil Trial Section, Northern Region  
P.O. Box 55, Ben Franklin Station  
Washington, D.C. 20044

State of Kentucky  
Department of Revenue  
501 High Street  
Frankfort, KY40601

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